



DRAFT 2007-SVz-20: Sunset Recycling Facility Credits

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	Date:	May 7, 2008
Introduced by:		Summary by:	Trina Griffin
Version:	Bill Draft		Committee Counsel

SUMMARY: *This proposal would place a sunset on the credit for investing in a large or major recycling facility and would extend by five years the sunset on the credit for reinvestment in a recycling facility.*

CURRENT LAW:

Credit for Investing in Large or Major Recycling Facility (§ 105-129.27)

Eligibility. – This credit, enacted in 1998, was intended as an alternative to the machinery and equipment credit available under the Bill Lee Act. It provides a credit to an owner who purchases or leases machinery and equipment for a major recycling facility in this State. The credit is allowed against franchise or income tax. The credit currently has no sunset.

Credit Amount. – The credit amount depends on the recycling facility.

- An owner who purchases or leases machinery and equipment for a **major** recycling facility is eligible for a credit equal to **50%** of the amount paid for the machinery and equipment.
- An owner who purchases or leases machinery and equipment for a **large** recycling facility is eligible for a credit equal to **20%** of the amount paid.

Carryforward Period. – 25 years

Change in Ownership. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

Forfeiture. – If any machinery or equipment for which a credit is allowed is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest.

Credit for Reinvestment by Recycling Facility (§ 105-129.28)

Eligibility. – Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of \$300 million required to qualify as a major recycling

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facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. – The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was \$640,000. In 2004, the cap leveled off at \$10.4 million a year.

Sunset. – The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

BILL ANALYSIS: The proposal would do the following two things:

- Place a five-year sunset on the credit for investment in a large or major recycling facility.
- Extend for five years the current January 1, 2008 sunset on the credit for reinvestment. The bill deletes language related to the initial ten-year period for the credit while preserving the conditions imposed on the use of the credit proceeds related to reinvestment in infrastructure.

EFFECTIVE DATE: This act would be effective when it becomes law.

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